

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TONI GOZ, on behalf of the estate of LYNN
D. TRAVERS.

Plaintiff,

V.

ALLIED COLLECTION SERVICES, INC.,
GRANT & WEBER, INC.; EXPERIAN
INFORMATION SOLUTIONS, INC.;
SILVER STATE SCHOOLS CREDIT
UNION; AND WELLS FARGO HOME
MORTGAGE.

Defendants.

Case No. 2:16-cv-01848-RFB-PAL

Cons. Case No. 2:17-cv-01591-JCM-CWH

ORDER

I. INTRODUCTION

Lynn Travers sued Defendants, alleging violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*, and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.* ECF No. 1. After the unfortunate passing of Travers, Plaintiff Toni Goz, in her capacity as administratrix of Travers’s estate, was substituted as the proper party in this action. ECF No. 133.

Before the Court now comes Plaintiff and Defendants Experian Information Solutions, Inc. and Silver State Schools Credit Union’s Joint Motion for Reconsideration of Motions for Summary Judgment. ECF No. 134. The Court grants the Motion for Reconsideration. Thus, the Court reconsiders the following motions below: Plaintiff’s two Motions for Partial Summary Judgment, ECF Nos. 84 and 93; Defendant Experian’s Motion for Summary Judgment, ECF No. 82; and Defendant Silver State Schools’s Motion for Summary Judgment, ECF No. 88.

II. PROCEDURAL BACKGROUND

Travers initiated this action on August 4, 2016, alleging two claims: (1) violation of the

1 FCRA against all Defendants and (2) violation of the FDCPA against Defendants State Collection
2 Service, Inc., Grant & Weber, Inc., and Allied Collection Services, Inc. ECF No. 1. This matter
3 was later consolidated with Lynn Travers v. Experian Information Solutions Inc. and Silver State
4 Schools Credit Union, 2:17-cv-01591-JCM-CWH (D. Nev. filed August 4, 2016). ECF No. 122.

5 The Clerk of the Court entered default against Allied Collection Services on June 23,
6 2017.¹ ECF No. 78. Defendants State Collection Service, Inc., Wells Fargo Home Mortgage,
7 Equifax Information Services, LLC, Trans Union, LLC, and Innovis Data Solutions, Inc. were all
8 dismissed from this matter via voluntary dismissals or stipulations to dismissal. ECF Nos. 16, 18,
9 25, 34, 74. Grant & Weber was served but has not participated in this matter. ECF No. 36; see
10 also docket (indicating Defendant Grant & Weber failure to defend). However, Grant & Weber
11 has not been dismissed from the matter nor has an entry of default been entered against it. See
12 docket.

13 On July 3, 2017, Travers moved for partial summary judgment against Experian, ECF
14 No. 84, and against Silver State Schools, ECF No. 93. The two Defendants also moved for
15 summary judgment on Travers's claims. ECF Nos. 82, 88. Each motion was fully briefed by the
16 parties. ECF Nos. 102, 103, 107, 111, 113, 114, 116, 117. The Court entertained oral argument
17 on the motions on March 1, 2018, ultimately taking the motions under submission. ECF No. 21.

18 Travers's counsel subsequently filed a Suggestion of Death on March 22, 2018, noticing
19 the Court of Travers's passing. ECF No. 126. The Court therefore denied the four motions for
20 summary judgment without prejudice and ordered counsel to move to substitute a real party in
21 interest under Federal Rule of Civil Procedure 25 within sixty days of March 28, 2018. ECF
22 No. 29. The Court also instructed the parties to file a joint motion for reconsideration of the four
23 motions for summary judgment if a substitution was in fact made. Id. Plaintiff was substituted as
24 the proper party in her capacity as administratrix of Travers's estate on May 18, 2018. ECF
25 No. 133. Plaintiff and Defendants Experian and Silver State Schools now move for
26 reconsideration of the four motions in accordance with the Court's order. ECF No. 134.

27 _____
28 ¹ Default judgment has not yet been entered against Defendant Allied Collection Services,
Inc. See docket.

1 **III. JOINT MOTION TO RECONSIDER**

2 To begin, the Court grants the parties' Joint Motion for Reconsideration. The Court denied
3 the parties' motions for summary judgment based on the lack of a real party in interest after
4 Travers's death. Because a real party in interest, Plaintiff Goz, has been substituted in the matter
5 and the parties move for reconsideration in accordance with the Court's earlier order, the Court
6 finds the circumstances justify reconsideration of the motions. See Fed. R. Civ. P. 60(b)(6)
7 (allowing for relief reconsideration under certain circumstances, including "any other reason that
8 justifies relief.").

9 **IV. MOTIONS FOR SUMMARY JUDGMENT**

10 The Court now turns to the four motions for summary judgment.

11 **a. Undisputed Facts**

12 The Court finds the following facts to be undisputed. As defined by the FCRA, Experian
13 is a credit reporting agency ("CRA"), Silver State Schools is a furnisher, and Travers was a
14 consumer.

15 i. Travers's Bankruptcy

16 Travers filed a Chapter 13 bankruptcy petition on August 29, 2011. The petition listed two
17 of Travers's accounts on Schedule D: her Wells Fargo account and her first Silver State School
18 account. The petition also listed Travers's second Silver State School account on Schedule F. The
19 bankruptcy court confirmed Travers's plan of reorganization on January 25, 2012. Each of
20 Travers's three accounts were included in the approved plan. The bankruptcy trustee entered a
21 final account and report on May 14, 2015, indicating that Travers satisfied all the plan payments.
22 The bankruptcy court discharged Travers on July 20, 2015.

23 ii. Travers's Disputes to her Credit Report Disclosure

24 Travers paid for a copy of her credit report from Experian in October 2015. She later
25 received a copy of the disclosure, which was dated October 30, 2015.² The disclosure failed to list
26 Travers's Silver State School accounts as part of her bankruptcy; the disclosure instead listed the

28 ² A disclosure is a report that discloses to a consumer all the information provided on a
credit report generated from Experian. A disclosure is also called a consumer disclosure initial or
a CDI.

1 accounts as “charged off.” While it listed Travers’s Wells Fargo account as part of her bankruptcy,
2 it stated the account was included in the bankruptcy on July 20, 2015. The same information was
3 reported on a disclosure dated December 23, 2015.

4 Travers disputed information regarding, in part, the three accounts on April 4, 2016 by
5 mailing a letter to Experian. In her dispute letter, Travers identified that the first Silver State
6 Schools account was reported with a status of “charge off” multiple times and was reported with
7 incorrect balances. She asked that the account be reported as “current or discharged in Bankruptcy
8 at any time after the discharge date” and that it be reported with a zero balance. ECF No. 86-8.
9 She asked that the second Silver State Schools account be reported in the same manner. She also
10 requested that the Wells Fargo account be updated to reflect her ongoing payments. Travers
11 attached to the letter a copy of the October disclosure, the first three pages of her bankruptcy
12 petition, and her identifying information.

13 iii. Experian’s Reinvestigation Process to Travers’s Disputes

14 Experian received Travers’s dispute letter on April 12, 2016 and began a reinvestigation
15 by sending automated consumer dispute verifications (“ACDV”) to Silver State Schools and Wells
16 Fargo.³ Experian attached Travers’s dispute letter to the ACDVs. Both furnishers timely
17 responded. Wells Fargo responded by reporting: a balance date of April 7, 2016; a CII indicating
18 Chapter 13 discharge; and a last payment date of March 31, 2016. Silver State Schools responded
19 by reporting: a closed date of August 29, 2011; a balance date of July 20, 2015; and a CII indicating
20 a zero balance and current as of July 2015 for the first Silver State Schools account and as of
21 August 2015 for the second Silver State Schools Account.

22 Experian sent its reinvestigation results to Travers on May 4, 2016. Experian marked all
23 three of the accounts as updated in the dispute results section and stated that each account was
24 updated to reflect changes required due to the reinvestigation. Experian did not categorize any of
25 the three accounts in a section titled “remains” since the reinvestigation resulted in changes to all

26

³ Experian sends an ACDV to a furnisher to inform the furnisher of the dispute and to
27 obtain a response regarding the disputed information. Typically, a furnisher must respond within
28 thirty days to an ACDV.

1 three of the accounts. The disclosure also detailed Travers's bankruptcy petition as being filed in
2 August 2011 and discharged in July 2015, rendering the bankruptcy reportable until August 2018.

3 The disclosure also detailed Travers's Silver State Schools accounts as included in the
4 bankruptcy but not until August 4, 2015 for the first account and September 4, 2015 for the second
5 account. It also detailed the Wells Fargo account as included in the bankruptcy, dating its inclusion
6 as of March 31, 2016.

7 Experian invited Travers to submit additional documentation to support her disputes if she
8 was unsatisfied with the reinvestigation results. Travers did not submit any additional documents.
9 Thus, Experian has since continued reporting Travers's information as updated through the
10 reinvestigation process.

11 Although the disclosure did not include a statement from Travers that the information was
12 disputed, Experian had notified her that the request was premature when she made it and that she
13 would therefore need to renew the request after reviewing the reinvestigation results. Travers
14 never renewed the request.

15 **b. Disputed Facts**

16 The parties dispute whether Defendants conducted reasonable investigations into Travers's
17 dispute, whether Defendants reported inaccurate information; and whether Defendants caused
18 damages to Travers.

19 **c. Legal Standard**

20 Summary judgment is appropriate when the pleadings, depositions, answers to
21 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no
22 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."
23 Fed. R. Civ. P. 56(a); *accord Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). When considering
24 the propriety of summary judgment, the court views all facts and draws all inferences in the light
25 most favorable to the nonmoving party. *Gonzalez v. City of Anaheim*, 747 F.3d 789, 793 (9th Cir.
26 2014). If the movant has carried its burden, the non-moving party "must do more than simply
27 show that there is some metaphysical doubt as to the material facts.... Where the record taken as
28 a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine

1 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation
2 marks omitted). It is improper for the Court to resolve genuine factual disputes or make credibility
3 determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th
4 Cir. 2017) (citations omitted).

5 **d. Discussion**

6 Plaintiff asserts violations of the FCRA against Defendants Experian and Silver State
7 Schools.

8 i. The FCRA

9 “Congress enacted the [FCRA] in 1970 ‘to ensure fair and accurate credit reporting,
10 promote efficiency in the banking system, and protect consumer privacy.’” Gorman v. Wolpoff
11 & Abramson, LLP, 584 F.3d 1147, 1153 (9th Cir. 2009) (quoting Safeco Ins. Co. of Am. v. Burr,
12 551 U.S. 47 (2007)). “As an important means to this end, the Act sought to make ‘[CRAs] exercise
13 their grave responsibilities [in assembling and evaluating consumers’ credit, and disseminating
14 information about consumers’ credit] with fairness, impartiality, and a respect for the consumer’s
15 right to privacy.’” Id. (alteration in original) (quoting 15 U.S.C. § 1681(a)(4)).

16 In relation to the duties of CRAs in the event a consumer disputes reported information as
17 inaccurate, Section 1681i provides:

18 [T]he [CRA] shall ... conduct a reasonable reinvestigation to determine whether
19 the disputed information is inaccurate and record the current status of the disputed
20 information, or delete the item from the file ..., before the end of the 30-day period
beginning on the date on which the [CRA] receives the [consumer’s dispute].

21 15 U.S.C. § 1681i(a)(1)(A). Thus, the CRA must conduct a reinvestigation of information
22 provided by furnishers or creditors within thirty days of receiving notice of the consumer dispute.
23 Id. To conduct a reasonable investigation, the FCRA requires that the CRA “provide notification
24 of the dispute to any [furnisher that] provided information in dispute[.]” Id. § 1681i(a)(2)(A). The
25 notice must contain “all relevant information regarding the dispute that the [CRA] has received
26 from the consumer....” Id. However, a consumer must trigger the CRA’s duty to reinvestigate by
27 “notify[ing] the [CRA] of the purported reporting error.” Herisko v. Bank of Am., 367 F. App’x
28 ///

1 793, 794 (9th Cir. 2010) (requiring the consumer’s notice to identify each challenged inaccuracy
2 to trigger a CRA’s duty under FCRA).

3 The FCRA also imposes duties on furnishers once a consumer disputes the accuracy of
4 reported information. Id. § 1681s-2. Section 1681s-2 requires a furnisher to take the following
5 actions after receiving notice of the consumer dispute:

- 6 (A) conduct an investigation with respect to the disputed information;
- 7 (B) review all relevant information provided by the [CRA]...;
- 8 (C) report the results of the investigation to the [CRA];
- 9 (D) if the investigation finds that the information is incomplete or inaccurate, report
those results to all other [CRAs] to which the [furnisher provided] the information
and that compile and maintain files on consumers on a nationwide basis; and
- 10 (E) if an item of information disputed by a consumer is found to be inaccurate or
incomplete or cannot be verified after any reinvestigation..., for purposes of
reporting to a [CRA] only, as appropriate, based on the results of the reinvestigation
promptly [modify, delete, or permanently block the reporting of that item of
information].

14 Id. § 1681s-2(b)(1)(A)-(E). A furnisher may be held liable for violation 15 U.S.C. § 1681s-
15 2(b)(1) if it fails to conduct a reasonable investigation after being notified by a CRA of a
16 consumer’s dispute. Gorman, 584 F.3d at 1157. The question of whether an investigation was
17 reasonable is left to the jury unless “only one conclusion about the conduct’s reasonableness is
18 possible.” Id. (citation and quotation marks omitted). A furnisher may also be held liable if it
19 conducts a reasonable investigation but subsequently declines to “rectify past misreporting and
20 prevent future misreporting of information.” Drew v. Equifax Info. Servs., LLC, 690 F.3d 1100,
21 1108 (9th Cir. 2012). But like the notice required to trigger a CRA’s duty, a furnisher’s duties
22 under FCRA do not arise until it receives notice of the dispute[.]” Herisko, 367 F. App’x at 794.

23 ii. Analysis

24 The four pending motions for summary judgment turn on the notice provided by Travers
25 in her dispute letter to Experian, which was then forwarded to Silver State Schools. Plaintiff
26 contends that the letter required Defendants to update the bankruptcy discharge date according to
27 the date on which Travers filed her petition. The Court disagrees.

28 ///

1 The dispute letter asks that specific information be corrected in a specific manner: (1) the
2 Silver State Schools accounts to be reported as a zero balance; (2) the Silver State Schools accounts
3 to be reported as discharged in bankruptcy rather than being charged off multiple times; and (3)
4 the Wells Fargo Account be updated to reflect the current balance and past payments. It is
5 undisputed that the requested changes were made as a result of the investigation and
6 reinvestigation conducted, respectively, by Silver State Schools and Experian. Although the date
7 of the bankruptcy may have continued to be misreported after the conclusion of the reinvestigation,
8 Travers failed to challenge the reported date of the bankruptcy as being inaccurate in her dispute
9 letter. Thus, neither Experian nor Silver State Schools were under a duty to correct the inaccuracy.
10 Because the inaccuracy of the reported bankruptcy date is the basis of this litigation and neither
11 Defendant had notice of the inaccuracy prior to the suit, the Court finds both Defendants are
12 entitled to summary judgment as a matter of law. See Herisko, 367 F. App'x at 794. The Court
13 grants both Defendants' motions and denies Plaintiff's two motions accordingly.

14 **V. CONCLUSION**

15 **IT IS ORDERED** that the parties Joint Motion to Reconsider (ECF No. 134) is
16 GRANTED.

17 **IT IS ORDERED** that Plaintiff Toni Goz's Motion for Summary Judgment (ECF No. 84)
18 is DENIED.

19 **IT IS ORDERED** that Plaintiff Toni Goz's Motion for Summary Judgment (ECF No. 93)
20 is DENIED.

21 **IT IS ORDERED** that Defendant Silver State Schools Credit Union's Motion for
22 Summary Judgment (ECF No. 82) is GRANTED. The Clerk of the Court is instructed to enter
23 judgment in favor of Defendant Silver State Schools Credit Union.

24 **IT IS ORDERED** that Defendant Experian Information Solutions, Inc.'s Motion for
25 Summary Judgment (ECF No. 88) is GRANTED. The Clerk of the Court is instructed to enter
26 judgment in favor of Defendant Experian Information Solutions, Inc.

27 **IT IS ORDERED** that the Clerk of Court shall dismiss the case against the two remaining
28 defendants, Allied Collection Services and Grant & Weber, without prejudice as Plaintiff has not

1 taken further action to prosecute this case against either one of them. The Court exercises its
2 inherent authority in the management of its docket and its authority under Rule 41(b) to dismiss
3 the action against these two Defendants for failure to prosecute. Plaintiff shall have 14 days to
4 request reconsideration of this dismissal against these two Defendants and file a motion for
5 reconsideration to reopen the case and, simultaneously, a motion for default/default judgment. If
6 no such motion is filed, the case will be deemed without further order from this Court as dismissed
7 with prejudice as to these two Defendants.

8 **IT IS ORDERED** that the Clerk of Court shall close this case.
9

10 DATED: March 25, 2019.



11
12 **RICHARD F. BOULWARE, II**
13 **UNITED STATES DISTRICT JUDGE**
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28